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EXAMINER

SCHNURR, JOHN R

ART UNIT

PAPER NUMBER

2421

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/870,266	<b>Applicant(s)</b> WHITE ET AL.	
	<b>Examiner</b> JOHN SCHNURR	<b>Art Unit</b> 2421	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4-7 and 13-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-7 and 13-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This Office Action is in response to the Amendment After Non-Final Rejection filed 06/30/2009. Claims 4-7 and 13-26 are pending and have been examined.
2. The information disclosure statements (IDS) submitted on 06/30/2009 and 10/26/2009 were considered by the examiner.

### ***Response to Arguments***

3. Applicant's arguments filed 06/30/2009 have been fully considered but they are not persuasive.

In response to applicant's arguments that the Cited Art does not teach the profiles or preferences of the users "being further based on time-of-day viewing habits," the examiner respectfully disagrees. Herz (US 5,758,257) clearly teaches the user profiles including time-of-day viewing habits, col. 4 lines 60-63 and col. 25 lines 8-13.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herz (US 5,758,257) in view of Alexander (US 6,177,931) and further in view of Connely (US 6,144,376).

Considering claim 13, Herz discloses a method of operating a computer implemented interactive entertainment system (column 47, lines 26-29) comprising:

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logging entertainment selections of plural users (column 41, lines 26-27 and 33-36);

generating affinity groupings based on similarities in the movie selections logged (column 48, line 19), tv selection logged (column 6, lines 50-60, column 15, lines 22-29 and column 38, lines 56-64) and games played (column 47, lines 22-26 )the affinity grouping being further based on time-of-day viewing habits (col. 4 lines 60-63 and col. 25 lines 8-13);

logging entertainment selections of a first user to create a first user profile (column 9, lines 30-51 and column 45, lines 59-63) the entertainment selections comprising at least one television program watched and at least one video on demand movie received (column 48, lines 55-65);

determining an affinity grouping similar to the first user's first user profile (column 34, lines 31-32).

Herz further discloses suggesting a video program to the first user that the first user has never watched (column 4, lines 4-15) based upon similar preferences of other viewers within the affinity grouping (column 47, lines 38-42).

Herz fails to disclose plural viewing channels; on certain of said channels, receiving television programs for viewing; on at least one of said channels, receiving video on demand movies; and in response to a query by the first user transmitted from the interactive controller to the interactive head-end, suggesting a video program to the first user.

In analogous art, Alexander discloses plural viewing channels (column 15, lines 47-48); on certain of said channels, receiving television programs for viewing (column

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30, lines 55-58); on at least one of said channels, receiving video on demand movies; (column 21, lines 50-54 and column 22, lines 29-33) and in response to a query by the first user transmitted from the interactive controller to the interactive head-end, suggesting a video program to the first user (column 31, lines 25-33).

It would have been obvious to one of ordinary skill in the art to modify the combined system of Herz to include presenting said copied video programs for viewing and querying a head-end for a suggested video program, as taught by Alexander, for the benefit of minimizing channel surfing.

Herz and Alexander fail to disclose receiving HTML-based content on at least one of said channels comprising at least one of a game channel, an interactive news channel, or a jukebox channel.

In analogous art, Connely discloses HTML-based content on at least one of said channels comprising a game channel (see channel 9 in figure 5C).

It would have been obvious to one of ordinary skill in the art to modify the combined system of Herz and Alexander to include HTML-based content on at least one of said channels comprising a game channel, as taught by Connely, for the benefit of providing the user web based entertainment via a television user interface.

6. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz (US 5,758,257) in view of Alexander (US 6,177,931) further in view of Connely (US 6,144,376) and further in view of Yoshinobu (US 5,734,444).

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Considering claim 4, Herz combined with Alexander and Connely, as in claim 13, clearly teaches defining plural viewing channels; on certain of said channels, presenting television programs for viewing.

Alexander further teaches defining plural viewing channels (column 15, lines 47-48); on certain of said channels, presenting television programs for viewing (column 30, lines 55-58); on at least one of said channels, presenting said copied video program for viewing (column 21, lines 50-54 and column 22, lines 29-33).

However, Herz combined with Alexander and Connely does not explicitly teach presenting a copied video program for viewing wherein a presented copied video program is a determined program from the first user's favorite entertainment copied automatically when the first user was not watching the determined program.

In an analogous art, Yoshinobu clearly teaches a determined program from the first user's favorite entertainment copied automatically when the first user was not watching the determined program. (column 11 line 64 to column 12 line 14, column 15 lines 38-47, column 24 lines 51-59)

Therefore, at the time the invention was made, it would have been obvious to one with ordinary skill in the art to modify the system of Herz combined with Alexander and Connely by copying a determined program from the first user's favorite entertainment copied automatically when the first user was not watching the determined program, as taught by Yoshinobu, for the benefit of not missing a favorite program when broadcast while watching another program, and also for accommodating the user's viewing preference of recorded programs.

As for claim 5, it is met by the combination of Herz, Alexander, Connely and Yoshinobu. In particular, Alexander discloses listing the copied video program in an electronic program guide associated with the system, together with a viewing channel on which the copied video can be viewed (Alexander—column 30, lines 53-58).

7. Claims 6, 14-18, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz (US 5,758,257) in view of Alexander (US 6,177,931) further in view of Yoshinobu (US 5,734,444).

Considering claim 6, Herz discloses a method of operating a video system (412—figure 4), the video system including a video input able to receive video information from an interactive head-end (column 41, lines 20-28), a controller (column 45, lines 45-46), a remote control (Fig. 10 1008), a screen (Fig. 10 TV) and a store (902—figure 9), the method comprising: the interactive head-end monitoring a user's viewing habits to determine a normally-watched broadcast video program (column 14, lines 5-7 and column 42, lines 7-10). Herz further discloses generating profiles for plural users, said profiles comprising user viewing habits (column 25, lines 7-13) and other user habits comprising a game habit (column 47, lines 22-26) and customer's zip code (column 11, lines 61-66), the profiles being further based on time-of-day viewing habits (col. 4 lines 60-63 and col. 25 lines 8-13); presenting a listing of available programs that appeared favored by other viewers with profiles similar to the user's

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viewing habits (column 5, lines 23-52 and column 46, lines 50-57); correlating similar profiles into affinity groupings (column 15 lines 22-33, column 47 lines 45-49); wherein the system can suggest to a viewer other programs (column 22, line 64 – column 23, line 5) based upon similar preferences determined from said affinity groupings (column 15 lines 22-33, column 25 line 65 – column 26 line 3, column 47 lines 45-49).

Herz further discloses suggesting a video program to the first user that the first user has never watched (column 4, lines 4-15) based upon similar preferences of other viewers within the affinity grouping (column 47, lines 38-42).

Herz fails to disclose defining plural viewing channels, including a favorites channel, which is a channel that includes the user's favorite shows;; on certain of said channels, presenting television programs for viewing; on at least one of said channels, presenting said copied video program for viewing; maintaining the copied video programs are after viewing; and in response to a query by the first user transmitted from the interactive controller to the interactive head-end, suggesting a video program to the first user.

In analogous art, Alexander discloses defining plural viewing channels (column 15, lines 47-48), including a favorites channel, which is a channel that includes the user's favorite shows (col. 30 lines 55-58); on certain of said channels, presenting television programs for viewing (column 30, lines 55-58); on at least one of said channels, presenting said copied video program for viewing (column 21, lines 50-54 and column 22, lines 29-33); the copied video programs are maintained after viewing (the recorded programs may be set to be viewed once, daily, or weekly i.e. the



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program is maintained after the first viewing for the daily or the weekly viewing—column 21, lines 50-54 and column 12, lines 10-21, where Alexander explicitly discloses copying video programs on a Digital Video Disc (DVD), wherein the copied video programs are obviously maintained after viewing); and in response to a query by the first user transmitted from the interactive controller to the interactive head-end, suggesting a video program to the first user (column 31, lines 25-33).

It would have been obvious to one of ordinary skill in the art to modify the combined system of Herz to include presenting said copied video programs for viewing and querying a head-end for a suggested video program, as taught by Alexander, for the benefit of minimizing channel surfing.

Herz combined with Alexander fails to disclose the controller copying the video program to the store if the user is not viewing said program when broadcast. Herz combined with Alexander also fails to disclose that the user need not plan in advance to record a normally-watched program, because the normally-watched program is automatically recorded if it is not viewed by the user when broadcast.

In analogous art, Yoshinobu discloses copying the video program to the store if the user is not viewing said program when broadcast. Yoshinobu also discloses that the user need not plan in advance to record a normally-watched program, because the normally-watched program is automatically recorded if it is not viewed by the user when broadcast (column 24, lines 51-59).

It would have been obvious to one of ordinary skill in the art to modify the system of Herz combined with Alexander to include an automatic recording of the normally-

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watched program, as taught by Yoshinobu, for the benefit of not missing a favorite program when broadcast while watching another favorite program.

Considering claim 14, Herz discloses a computer readable storage medium including executable instructions that cause a digital processor to perform a method (figure 11 and column 10, lines 6-20 and column 49, lines 32-51), the executable instructions comprising: instructions for monitoring a user's viewing habits to determine a favorite video program (column 14, lines 5-7 and column 42, lines 7-10); instructions for defining plural viewing channels (virtual channels); instructions for generating profiles for plural users connected to the interactive head-end (column 25, lines 7-13), said profiles comprising user viewing habits including at least time-of-day viewing habit (col. 4 lines 60-63 and col. 25 lines 8-13) and at least two other user features comprising a game habit (column 47, lines 22-26), a chat habit, zip code (column 11, lines 61-66), an interactive news habit, or a jukebox habit; instructions for correlating profiles similar to the first user into an affinity grouping (column 15 lines 22-33, column 47 lines 45-49); and suggesting a video program to the first user (column 22, line 64 – column 23, line 5) based upon similar preferences of other viewers within the affinity grouping (column 15 lines 22-33, column 25 line 65 – column 26 line 3, column 47 lines 45-49).

Herz further discloses suggesting a video program to the first user that the first user has never watched (column 4, lines 4-15) based upon similar preferences of other viewers within the affinity grouping (column 47, lines 38-42).

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Herz fails to disclose defining plural viewing channels; on certain of said channels, presenting television programs for viewing; on at least one of said channels, presenting said copied video program for viewing; maintaining the copied video programs after viewing; and in response to a query by the first user transmitted from the interactive controller to the interactive head-end, suggesting a video program to the first user.

In analogous art, Alexander discloses defining plural viewing channels (column 15, lines 47-48); on certain of said channels, presenting television programs for viewing (column 30, lines 55-58); on at least one of said channels, presenting said copied video program for viewing (column 21, lines 50-54 and column 22, lines 29-33); the copied video programs are maintained after viewing (the recorded programs may be set to be viewed once, daily, or weekly i.e. the program is maintained after the first viewing for the daily or the weekly viewing—column 21, lines 50-54 and column 12, lines 10-21, where Alexander explicitly discloses copying video programs on a Digital Video Disc (DVD), wherein the copied video programs are obviously maintained after viewing); and in response to a query by the first user transmitted from the interactive controller to the interactive head-end, suggesting a video program to the first user (column 31, lines 25-33).

It would have been obvious to one of ordinary skill in the art to modify the combined system of Herz to include presenting said copied video programs for viewing and querying a head-end for a suggested video program, as taught by Alexander, for the benefit of minimizing channel surfing.

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Herz combined with Alexander fails to disclose instructions for copying the favorite video program to a storage medium if the user is not viewing said program when broadcast wherein the user need not plan in advance to record a favorite program, because the favorite program is automatically recorded if it is not viewed by the user when broadcast.

In analogous art, Yoshinobu discloses instructions for copying the favorite video program to a storage medium if the user is not viewing said program when broadcast wherein the user need not plan in advance to record a favorite program, because the favorite program is automatically recorded if it is not viewed by the user when broadcast (column 24, lines 51-59).

It would have been obvious to one of ordinary skill in the art to modify the system of Herz combined with Alexander to include an automatic recording of the favorite program, as taught by Yoshinobu, for the benefit of not missing a favorite program when broadcast while watching another favorite program.

As for claim 15, Yoshinobu further discloses monitoring the user's viewing habits to determine a ranking of viewed broadcast video programs by viewing frequency; and copying to the store plural programs that are not viewed by the user when broadcast, in accordance with said ranking (column 11 line 64 to column 12 line 14 and column 15 lines 38-47 and column 24 lines 51-59). Therefore, the recording of programs is in accordance with said ranking. Alexander discloses listing the copied video program in an electronic program guide associated with the system, together with a viewing

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channel on which the copied video can be viewed (Alexander—column 30, lines 53-58).

With regards to claim 16, it is met by the combination of it is met by the combination of Herz, Alexander and Yoshinobu. In particular, Yoshinobu discloses listing the automatically copied favorite video program in the favorite channel by title (column 24, lines 21-26) and length (start time and end time—column 14, lines 48-50).

Regarding claim 17, it is met by the combination of it is met by the combination of Herz, Alexander and Yoshinobu. In particular, Yoshinobu discloses automatically playing the copied favorite video program when the favorites channel is selected (column 14, lines 54-57).

Considering claim 18, it is met by the combination of it is met by the combination of Herz, Alexander and Yoshinobu. In particular, Yoshinobu discloses listing plural copied video programs (Yoshinobu—see figure 10) from which the copied favorite video program can be selected for playback (column 14, lines 48-57).

With regards to claim 20, it is met by the combination of Herz, Alexander and Yoshinobu. In particular, Herz discloses that the specific program is suggested to the viewer (column 22, line 64 – column 23, line 5 and column 47, lines 37-45) in response to a viewer's inquiry (column 47, lines 37-45 and column 48, line 48 – column 49, line 1).

Regarding claim 21, it is met by the combination of Herz, Alexander and Yoshinobu. In particular, Herz discloses that the specific program is suggested to the viewer (column 22, line 64 – column 23, line 5 and column 47, lines 37-45) autonomously (column 49, lines 52-54).

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herz (US 5,758,257) in view of Alexander (US 6,177,931) further in view of Yoshinobu (US 5,734,444) and further in view of Smith (US 5,933,141).

Consider claim 7, Herz combined with Alexander and Yoshinobu clearly teaches the method of claim 6. Alexander further discloses displaying a translucent menu in response to receiving an indication that a remote control button has been pressed and highlighting a region of the menu (column 3 lines 21-55).

However, Alexander fails to disclose the menu is a control menu with a play button.

In an analogous art, Smith discloses displaying a control panel with a play button (Figs. 4A-4C column 6 line 51 to column 7 line 25).

It would have been obvious to one of ordinary skill in the art to modify the combined system of Herz combined with Alexander and Yoshinobu to include a control panel with a play button, as taught by Smith, for the benefit of preventing the display screen from becoming cluttered (see column 1 lines 49-63 Smith).

9. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herz (US 5,758,257) in view of Alexander (US 6,177,931) further in view of Yoshinobu (US 5,734,444) and further in view of Daniels (2002/0032907).

As for claim 19, Herz, Alexander and Yoshinobu fail to disclose permitting a viewer to take a break from broadcast programming comprising instructions for receiving a delay program selection; and instructions for routing broadcast programming to memory upon receiving the delay program selection.

In analogous art, Daniels discloses permitting a viewer to take a break from broadcast programming (paragraph 0080, lines 8-11) comprising instructions for receiving a delay program selection (pause command from the viewer—paragraph 0080, lines 1-4); and instructions for routing broadcast programming to memory upon receiving the delay program selection (start-recording upon receiving the pause command—paragraph 0021, lines 8-10 and paragraph 0083, lines 1-8).

It would have been obvious to one of ordinary skill in the art to modify the combined system of Herz, Alexander and Yoshinobu to include permitting a viewer to take a break from broadcast programming by use of a delay command, as taught by Daniels, for the benefit of allowing the viewer to take a break from viewing the current channel and/or switch to another channel (paragraph 0080, lines 8-11).

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10. Claims 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz (US 5,758,257) in view of Alexander (US 6,177,931) further in view of Yoshinobu (US 5,734,444) and further in view of Okada (US 7,095,949).

As for claims 24-26, Herz, Alexander and Yoshinobu fail to disclose deleting at least one of the plural programs copied to the store by time of copy, wherein the oldest copy is deleted.

In analogous art, Okada discloses deleting stored video content by time of copy, wherein the oldest copy is deleted (column 8 lines 45-47).

It would have been obvious to one of ordinary skill in the art to modify the combined system of Herz, Alexander and Yoshinobu to include deleting stored video content by time of copy, wherein the oldest copy is deleted, as taught by Okada, for the benefit of allowing the newest programming to be recorded.

As for claims 22 and 23, Herz, Alexander and Yoshinobu fail to disclose deleting at least one of the plural programs copied to the store by time of copy, wherein the oldest copy is deleted.

In analogous art, Okada discloses deleting stored video content by time of copy, wherein the oldest copy is deleted (column 8 lines 45-47).

It would have been obvious to one of ordinary skill in the art to modify the combined system of Herz, Alexander and Yoshinobu to include deleting stored video



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content by time of copy, wherein the oldest copy is deleted, as taught by Okada, for the benefit of allowing the newest programming to be recorded.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN SCHNURR whose telephone number is (571)270-1458. The examiner can normally be reached on M-F 9a-5p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John W. Miller/  
Supervisory Patent Examiner, Art Unit 2421

JRS